



CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD
P O Box 944275
SACRAMENTO CA 94244-2750

MARCELINA SZCZYPIOR

Claimant-Appellant

Precedent Benefit Decision No. P-B-492

OA Decision No.: 1520849
EDD: 0490 BYB: 01/02/2005

DECISION

Attached is the Appeals Board decision in the above-captioned case issued by Board Panel members:

CYNTHIA K. THORNTON

ANN M. RICHARDSON

JACK D. COX

VIRGINIA STROM-MARTIN

Adopted as Precedent: September 28, 2005

Case No.: AO-114803
Claimant: MARCELINA SZCZYPIOR

REM

ISSUE STATEMENT

The claimant appealed from the decision of the administrative law judge which held the claimant was disqualified for benefits under section 1256 of the Unemployment Insurance Code. The issue in this case is whether the claimant left the most recent employment voluntarily without good cause.

STATEMENT OF FACTS

The claimant was most recently employed by this employer as an x-ray technician for approximately eleven years. She voluntarily left this work on September 15, 2004 under the following circumstances.

The claimant had been commuting 38 miles to work for ten years. For the last year she worked three hours per day for four days a week at an hourly wage of \$11. As the cost of gasoline increased during that year, the wages she had remaining, after work-related expenses were subtracted, had declined. The time for her customary commute also increased, adding to the expense. She contended that, in the end, her wages covered only her gasoline and car repairs. After her request for a cost-of-living increase was denied by the employer, she voluntarily left the work.

REASONS FOR DECISION

An individual is disqualified for benefits if he or she left his or her most recent work voluntarily without good cause. (Unemployment Insurance Code, section 1256.)

There is good cause for voluntarily leaving work where the facts disclose a real, substantial, and compelling reason of such nature as would cause a reasonable person genuinely desirous of retaining employment to take similar action. (Precedent Decision P-B-27.)

An employment relationship is contractual in nature, whether express or implied, and a contract of employment is enforceable under California law whether oral or in writing. (Precedent Decision P-B-275.)

When an employee and an employer agree to an employment relationship, one of the terms of the agreement is the compensation. The employee has at least a general understanding or expectation of what the work-related expenses, such as transportation and childcare, will be. A reasonable employee makes at least a rough calculation of what the remaining wages will be after work-related expenses are subtracted in order to determine whether to accept an offer of employment. Once the conditions of employment are accepted, a subsequent dissatisfaction with those conditions, standing alone, will not support a finding of good cause to leave work. (*Hildebrand v. California Unemployment Insurance Appeals Board* (1977) 19 Cal.3d 765.)

Over time, it is likely that an employee's remaining wages after subtracting work-related expenses will change depending on changes in compensation and expenses.

A decline in a claimant's remaining wages is not attributable solely to the employment but is also dependent upon personal factors including the distance the employee lives from work, the method of transportation, the cost of transportation, and the type of childcare or family care selected.

The appeals board has held that financial circumstances can provide a claimant with good cause for leaving work. Examples include substantial increases in commuting and child care costs (Precedent Decision P-B-232); a substantial reduction in pay making the maintenance of a second residence unfeasible (Precedent Decision P-B-240); and the need for money to pay for expensive medical care that could only be secured by resigning and therefore accessing retirement funds (Precedent Decision P-B-274).

In Precedent Decision P-B-249 the Appeals Board stated that a claimant had good cause to voluntarily leave her work where the cost of her commute had increased to 28.97% of her gross weekly base wage, although the case was ultimately decided on other grounds.

In the case before us, the claimant contends that after working part-time for the employer for eleven years, her wages paid only for her gasoline and car repairs due to the increased cost of gasoline and the denial of her request for a cost-of-living increase. None of these amounts is in the record. In order to determine whether the claimant had good cause to voluntarily leave, these amounts must be ascertained. For that purpose, we set aside the decision of the administrative

law judge and remand the case for further hearing regarding the amounts of these wages, work-related expenses and requested cost-of-living increase, and for a new decision.

On remand, the administrative law judge should consider factors such as the following in developing the record and arriving at a decision as to whether the claimant had good cause for leaving:

1. The amount of any change in wages;
2. The amount of any change in reasonable and necessary work-related expenses;
3. How recent and how rapid any changes in wages or reasonable and necessary work-related expenses have been;
4. Whether any change in expenses was foreseeable or unexpected;
5. The value of fringe benefits;
6. The claimant's prospects for reemployment;
7. Whether any increased work-related expenses might decline with alternative employment;
8. Whether leaving is necessary to protect access to necessities or to discretionary items;
9. The consequences to the claimant and claimant's family of not leaving work;
10. The availability of alternatives to leaving work such as using existing resources, reducing other expenses, obtaining supplementary employment, or increasing or restructuring hours or pay;
11. The extent of exploration of available alternatives by the claimant;
12. Whether the claimant gave the employer notice of the problem and an opportunity to ameliorate the situation by increasing or restructuring pay, increasing or rescheduling hours, promoting or transferring the claimant, or offering real alternatives which would ultimately increase the claimant's remaining wages and which the claimant may not have considered.

The administrative law judge should weigh the various factors present in the case to determine whether, taken together, they would motivate a reasonable person genuinely desirous of retaining employment to leave the employment. There may not be evidence relating to all of the factors in each case, but the emphasis should be on obtaining available evidence relevant to the applicable factors in each case and weighing those factors. Of course, the availability of alternatives to leaving, the claimant's consideration of those alternatives, giving the employer notice of the problem and an opportunity to ameliorate the situation, are generally considered when a claimant leaves work for any reason, and are not unique to this analysis.

Because the record in the case before us is inadequate to decide whether the claimant had good cause to leave work, the decision of the administrative law judge is set aside and the case is remanded to an administrative law judge for further hearing and decision consistent with the above discussion.

DECISION

The decision of the administrative law judge is set aside. The case is remanded to an administrative law judge for further hearing and decision on the merits. The record previously produced in the course of these proceedings shall remain a part of the record.